

(c) *Appellate authority.* Upon appeal a settlement authority has the same authority to settle a claim as that specified above. However, no appellate authority below the Office of the Secretary of the Air Force may deny an appeal of a claim it previously denied.

(d) *Authority to reduce, withdraw, and restore settlement authority.* Any superior settlement authority may reduce, withdraw, or restore delegated settlement authority.

(e) *Settlement negotiations.* A settlement authority may settle a claim filed in any amount for a sum within the delegated settlement authority regardless of the amount claimed. Unsettled claims in excess of the delegated settlement authority are sent to the individual with higher settlement authority. Unsuccessful negotiations at one level do not bind higher authority.

(f) *Special exceptions.* No authority below the level of HQ USAF/JACC may settle claims for:

(1) Legal malpractice.

(2) On the job personal injury or death of an employee of a government contractor or subcontractor.

(3) Assault, battery, false imprisonment, false arrest, abuse of process, or malicious prosecution committed by an investigative or law enforcement officer.

#### § 842.103 Filing a claim.

This paragraph explains how to file a claim under the National Guard Claims Act.

(a) *How and when filed.* A claim is filed when a federal military agency receives from a claimant or duly authorized agent a properly completed SF 95 or other written and signed demand for money damages in a sum certain. Claims belonging to another agency are promptly transferred to the correct agency.

(b) *Receipt of claims from State National Guard agencies.* The Office of the State Adjutant General promptly sends claims it receives to the appropriate Air Force claims authority in whose geographic area the incident occurred. The report forwarded to the Air Force includes:

(1) The date, place, and nature of the incident.

(2) The names and organizations of ANG members involved, and the statutory duty status of the ANG members at the time of the incident (include copies of orders, if applicable).

(3) A scope of employment statement from the supervisors of the ANG members involved.

(4) The names of the claimants.

(5) A brief description of any damage to private property, personal injuries, or death.

(c) *Claims investigations.* (1) Upon receipt of a claim:

(i) It is investigated by claims office personnel responsible for the geographic area where the incident causing the claim occurred.

(ii) The investigative report includes a scope of employment statement and a copy of the orders authorizing the performance of duty by the ANG member.

(2) The State Adjutants General designate an official or office as point of contact for Air Force claims personnel and furnish necessary personnel to assist the Air Force investigation, subject to the availability of funds and personnel.

(d) *Amending a claim.* A claimant may amend a claim at any time prior to final action. To amend a claim the claimant or his or her authorized agent must submit a written, signed demand.

#### § 842.104 Advance payments.

Subpart Q of this part sets forth procedures for such payments.

#### § 842.105 Statute of limitations.

A claim must be filed in writing within 2 years after it accrues.

(a) Federal, not state law, determines the time of accrual. A claim accrues when the claimant discovers or reasonably should have discovered the existence of the act that resulted in the claimed loss.

(b) In computing the statutory time period, the day of the incident is excluded and the day the claim was filed is included.

(c) A claim filed after the statute has run is considered if the United States is at war or in an armed conflict when the claim accrues; or if the United States enters a war or armed conflict after the claim accrues, and good cause is shown. No claimant may file a claim

more than 2 years after the good cause ceases to exist or the war or armed conflict ends. Congress or the President establishes the beginning and end of war or armed conflict.

**§ 842.106 Who may file a claim.**

The following individuals may file a claim under this subpart.

(a) Owners of the property or their authorized agents may file a claim for property damage.

(b) Injured persons or their authorized agents may file a claim for personal injury.

(c) Executors or administrators of a decedent's estate or any other person legally entitled to do so under applicable local law may file a claim based on:

(i) An individual's death.

(ii) A cause of action surviving an individual's death.

(d) Insurers with subrogation rights may file a claim for losses paid in full by them. The parties may file a claim jointly or individually, to the extent of each party's interest, for losses partially paid by insurers with subrogation rights.

(e) Authorized agents signing a claim must show their title or legal capacity and present evidence of such authority to file the claim.

**§ 842.107 Who are proper claimants.**

Only certain individuals are proper claimants under this subpart. Proper claimants include:

(a) Citizens and inhabitants of the United States.

(b) States or territories and their agencies, unless it is the state of the ANG member who caused the injury or property damage.

(c) Counties, municipalities, or units of local government, unless they are in the state of the ANG member who caused the injury or property damage.

(d) Persons in foreign countries who are not inhabitants of a foreign country.

(e) Property owners, their representatives, and those with certain legal relationships with the record owner, including mortgagors, mortgagees, trustees, bailees, lessees and conditional vendees.

(f) Subrogees, to the extent they have paid the claim.

**§ 842.108 Who are not proper claimants.**

The following individuals are not proper claimants:

(a) ANG members performing duty under 32 U.S.C. when the personal injury or death claim arises incident to service.

(b) Agencies and departments of the U.S. Government including the District of Columbia government.

(c) Federal nonappropriated fund instrumentalities.

(d) Governments of foreign nations, their agencies, political subdivisions, and municipalities.

(e) The state territory, local government unit, or their agencies, whose ANG member caused the injury or property damage.

(f) Subrogees of all the above.

**§ 842.109 Claims payable.**

(a) Claims arising from noncombat activities of ANG members performing duty under 32 U.S.C and acting within the scope of their employment, whether or not such injuries or damages arose out of their negligent or wrongful acts or omissions.

(b) Claims are payable if they are for damage to bailed property under § 842.109(a) of this part where:

(1) The ANG assumed the duties of a bailee.

(2) The bailor did not assume the risk of loss by express agreement.

(3) Authorized ANG members acting in their official capacity properly accepted the property.

(c) Claims are payable if they are for loss or damage to:

(1) Insured or registered mail, under § 842.109 (a) or (b) of this part while in the possession of the ANG.

(2) Minimum fee insured mail but only if it has an insurance number or requirement for hand-to-hand receipt and was lost or damaged while in the possession of the ANG.

(3) Any mail in the possession of the United States Postal Service or a Military Postal Service due to an unlawful or negligent inspection, search, or seizure in an overseas military postal facility, which was ordered by ANG members.

(d) Claims filed by ANG military or civilian health care providers or legal